

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**AMERICAN MEDICAL RESPONSE WEST,**

**Employer**

**and**

**Case 20-RC-293267**

**SAN MATEO COUNTY FIREFIGHTERS,**

**IAFF LOCAL 2400,**

**Petitioner**

**REGIONAL DIRECTOR'S DECISION AND  
ORDER DISMISSING PETITION**

American Medical Response - West (the Employer) provides 911 emergency ambulance services to the County of San Mateo in California. San Mateo County Firefighters, IAFF Local 2400 (Petitioner) seeks to represent a bargaining unit of three Field Supervisors working at the Employer's San Mateo County facility located at 1510 Rollins Road, Burlingame, California. At issue is the supervisory status of the Field Supervisor classification.<sup>1</sup> The Employer contends that Field Supervisors are supervisors within the meaning of Section 2(11) of the National Labor Relations Act (the Act) based upon their asserted authority to discipline and assign work to other employees or effectively recommend hiring, discharge, reward and demotion of employees and thus, that Field Supervisors are not "employees" entitled to the protections of the Act. Petitioner maintains that the Field Supervisors are not statutory supervisors and thus, that they are employees under the Act.

A hearing officer of the National Labor Relations Board (the Board) held a videoconference hearing in this matter on April 20, 2022, and both parties filed post-hearing briefs. As explained below, based on the record, the briefs, and relevant Board law, I find that the Employer has met its burden of establishing that the Field Supervisors are supervisors within the meaning of the Act. The unit, which is composed solely of Field Supervisors, is therefore inappropriate and I shall dismiss the instant petition herein.

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<sup>1</sup> The parties stipulated that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to jurisdiction of the National Labor Relations Board (the Board); that Petitioner is a labor organization as defined by Section 2(5) of the Act; and that there is no collective-bargaining agreement covering the Field Supervisors.

## **I. THE EMPLOYER'S OPERATIONS**

The Employer is a party to a contract with San Mateo County (County Agreement) whereby it provides medical transportation services. The Employer services the County of San Mateo out of its headquarters located at 1510 Rollins Road, Burlingame, California, where the petitioned-for unit of Field Supervisors work. Regional Director Rodney Brouhard heads the San Mateo County operations. Beneath Brouhard in the supervisory hierarchy is Operations Manager Rick Ornelas, who directly supervises Field Supervisors Brian Warren, Stephen Charles Skourtis, and Richard LaMark.

The Employer's vehicle service technicians (VSTs), emergency medical technicians (EMTs) and paramedics (the VSTs, EMTs and paramedics collectively referred to herein as "field employees") report to Warren, Skourtis, and LaMark. (Tr. 755).<sup>2</sup> VSTs stock and maintain the ambulances. EMTs and paramedics respond to calls and treat and transport patients. Paramedics are trained and licensed to perform additional medical interventions beyond those performed by an EMT. EMTs and VSTs are represented for purposes of collective bargaining by the United Emergency Medical Services Workers (UEMSW), AFSCME Local 4911, AFL CIO. Paramedics are represented by the International Association of Fire Fighters, Local 2400, the Petitioner seeking to represent the Field Supervisors here. Field employees regularly work 12-hour shifts that are staggered throughout the day, are paid hourly, and receive overtime compensation.

The Employer operates ambulances in San Mateo County, and occasionally provides services in San Francisco County. The Employer provides two types of medical transport services 1) emergency 9-1-1 response services (9-1-1 calls) and 2) interfacility transport (IFT). Emergency 9-1-1 calls involve response to 9-1-1 emergency calls within the County of San Mateo. IFTs typically involve transferring a patient from one hospital to another. Approximately 85% of Employer's work involves 9-1-1 calls.

The Employer answers 9-1-1 calls and IFTs using two types of ambulances: basic life support (BLS) ambulances (or units) operated by two EMTs, and advanced life support (ALS) units operated by at least one paramedic. Typically, 9-1-1 calls require an ALS unit with an occasional BLS unit for support.

Pursuant to the County Agreement, the County of San Mateo is divided into 5 geographical zones. Each zone has a different designated response times by which the Employer must respond to a 9-1-1 call and arrive at the site of the emergency. Under the County Agreement, the Employer is obligated to respond to 9-1-1 calls within specific response times. If the Employer meets designated response times in fewer than 90% of 9-1-1 calls, the Employer must pay the County liquidated damages.

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<sup>2</sup> When fully staffed, the Employer employs approximately 280 employees with 130 field employees.

In order to comply with the County Agreement, the Employer institutes a variety of System Status Plans (Plans) that identify 72 different locations, or posts, where ambulances should be deployed to wait for calls. A Performance Manager, who reports to the Regional Director, develops these Plans and identifies which Plan(s) the Field Supervisors will implement.

## **II. THE SUPERVISORY ISSUE**

### **A. Field Supervisor Duties**

#### **1. General responsibilities**

Field Supervisors are tasked with ensuring that ambulances efficiently respond to 9-1-1 Calls and IFT requests, including that the ambulances are in good working condition, stocked with supplies, and adequately staffed. Field Supervisors work from headquarters located on Rollins Road, and implement the Plans identified by the Performance Manager.

On any given day, one Field Supervisor supervises about 60-70 employees. Field Supervisors work 48-hour shifts and are salaried. Field Supervisors also have their own offices and sleeping quarters. When the Regional Director or Operations Manager are not present at the facility, such as on weekends or at nights, the Field Supervisor is the highest-ranking individual present.

#### **2. Day-to-Day Operations**

Field Supervisors begin their shift by receiving a “passdown” report from the Field Supervisor of the previous shift. They then participate in meetings with the Regional Director and the Operations Manager to discuss staffing levels and other operational issues.

Field Supervisors control how to respond to 9-1-1 Calls or IFT requests by determining where ambulances, or units, are located in between calls. Field Supervisors provide dispatchers with either the Plan or adjustments to the Plan. The dispatchers, in turn, inform ambulances where to be in between their calls. Field Supervisors also control how long a unit can stay on a call. For example, when units transfer a patient to a medical facility, they are provided 20 minutes to complete the transfer. If the transfer takes longer, the unit may request additional time before they take the next call to complete the transfer. The first request for an extension of time is typically granted by the dispatcher. A second extension of time requires the permission of the Field Supervisor. Field Supervisors possess the authority to grant or deny such requests based on call volume.

For the higher-priority and complex calls, the Field Supervisor goes on-site to the emergency in an SUV marked “Supervisor” to assist and oversee field employees, coordinate

with local law enforcement, and ensure that field employees complete the call and proceed to the next one.

### 3. Discipline

It is undisputed that the Field Supervisors often initiate investigations and issue corrective action in the first step of the disciplinary process. When the infraction is relatively minor ( e.g., a non-egregious attendance issue), the employee is informed of the infraction and is provided a copy of the relevant policy. The Field Supervisor issues the “receipt of policy” corrective action without input from superiors. The record establishes that this type of corrective action can lead to future discipline (e.g, as set forth in the current Local 2400 CBA covering the paramedics).

For more serious infractions, the record shows that the Field Supervisors conduct the investigations on their own, which largely form the basis for the Employer’s disciplinary decisions. For example, in September 2021, after employees reported that a coworker purchased alcohol while on duty, Field Supervisor Brian Warren investigated the incident on his own after speaking with Operations Manager Rick Ornelas. He developed the questions for the interview, recorded the employee’s responses, and despite the offense typically being terminable, the Employer adopted Warren’s recommendation to instead issue a one-day suspension and final warning without any follow up or additional investigation.

In addition to the above disciplinary example, in another instance, Field Supervisor Charlie Skourtis investigated time theft by two employees, and he recommended termination based on his findings. It is unclear from the record whether the Employer considers time theft to be a terminable offense, but in this instance, Skourtis presented his findings and conclusion that the two subject employees colluded to commit time theft, and he recommended that they be terminated. The Employer adopted his recommendation without any follow up or additional investigation, but before it could mete out the discipline, the employees resigned.

Finally, in March 2022, Field Supervisor Richard LaMark investigated a report that one ambulance crew inappropriately talked a patient out of going to the hospital for which the patient was destined. Based on his investigation, LaMark concluded that the crew acted in accordance with protocol and recommended against taking any disciplinary action. That recommendation was followed without any further inquiry.

### 4. Changing System Status Plans

A critical part of the Field Supervisors’ responsibilities is to adjust the daily System Status Plans (Plans) to accommodate changing factors, such as staffing availability, the weather, and traffic congestion. It is incumbent upon a Field Supervisor to assess the situation and decide how to mitigate the effect of potential factors that will affect response times and maintain timely response times to 9-1-1 calls.

There are approximately 12-13 Plans in existence. These Plans contain detailed instructions for deploying ambulances to one of the 72 posts throughout the ~5 zones within the County. Plans identify for dispatchers where they should send ambulances to post between calls and, therefore, impacts which ambulance will be chosen to respond to each call, as the posting location will determine the proximity of each ambulance to each incoming call and which ambulance will be able to respond most quickly to a call.

Only one of the dozen or so Plans is implemented at a time for a given day or night, and is chosen based upon historical data showing which Plan would likely be the best fit for that particular date, time and conditions.

Again, the Performance Manager determines which Plan the Field Supervisors should implement on any given day. The Supervisors then relay that Plan to the dispatchers. However, because the various Plans do not account for situations that change in real time, such as weather, special events, and traffic conditions, the Field Supervisors regularly adjust the designated Plans on their own without consulting with the Performance Manager. The Field Supervisor considers the above changing conditions (weather, traffic, etc.) throughout the course of their shift and the effect(s) that the Field Supervisor anticipates that those changes will have on the volume of calls in the various County Zones. The most common example cited on the record of Field Supervisors changing Plans on their own was a change in weather and traffic. For example, when warm, blue-bird days entice large numbers from the east bay to travel to the coast, it results in heavy traffic to/from and along the coast. Supervisors will then switch to a plan that places ambulances on or nearer the coast. It appears from the record that Field Supervisors make these decisions on their own in real time, when they see fit to do so. Additionally, Field Supervisors can change posting assignments within the designated Plan in order to “double-post” ambulances at posting locations, or “post out of plan.” There are no written policies which govern how or when Field Supervisors should change the Plan or posting assignments.

#### 5. Field Supervisor involvement in determining field employees’ schedules

The respective collective-bargaining agreements govern how represented field employees are scheduled to their shifts. A schedule is created first by seniority-based bids from full-time employees. Any shifts that are not filled through bidding are filled on a first-come/serve basis to part-time employees. If the schedule still has unfilled shifts, those vacant shifts are offered as overtime opportunities to full-time employees and then part-time employees.

If there are still unfilled shifts after the above process, Field Supervisors can determine employees’ schedules. Field Supervisors can require employees to fill those shifts by (1) using mandated shifts (forced mandation), which provides additional pay, or (2) “admin move” employees from their scheduled hours to different hours, or (3) offering individual incentives to encourage individuals to volunteer. Some of these processes are governed by the existing collective-bargaining agreements, but others are not. For example, “forced mandation” (forced

overtime) is a process governed by the existing CBAs, but “voluntary mandation” (voluntary overtime) is not. Voluntary mandation refers to instances in which employees volunteer to work an extra shift to cover an unexpected vacancy. Volunteering for a “mandation” shift shields the employee from forced mandation for an undisclosed period of time, and it can also result in mandation pay, if such pay is available. Field Supervisors seek volunteers to stay beyond their shift to cover all or part of a vacant shift. They collaborate with prospective volunteers to ensure that vacancies are covered and sometimes will award “mandation pay” to those volunteers. Field Supervisor Warren testified that, when more than one person volunteers for voluntary mandation, the work is typically awarded per established practice; namely, on a first-come/first-served basis. However, when the first volunteer is only available for a relatively small portion of the shift, field supervisors wait to see if another volunteer steps up to take all, most, or the remainder of the shift. Failing that, Warren contacts Manager Ornelas or another manager for guidance.

Field Supervisor Warren testified that there are existing MOUs between the Employer and the incumbent labor organizations governing voluntary mandation, but he testified to never having seen them, and the record does not reflect the existence of any written guidance concerning voluntary mandation. However, in response to a question about his authority to grant mandation pay to those who volunteer, Warren testified that he awards that pay if he is granted permission to do so by upper management. He testified without contradiction that, by way of example, there was a “standing order” in effect for months to grant mandation pay. Regional Director Rodney Brouhard confirmed that upper management tells the Field Supervisors, “like somebody who’s going to negotiate on [their] behalf how much [they] can spend.” Brouhard explained that they tell the Field Supervisors when to take mandation pay “off the table,” and “when to pull out all the stops” in order to secure volunteers.<sup>3</sup> In other words, according to both Warren and Brouhard, the Field Supervisors grant mandation pay to volunteers at the direction of upper management. There is no record evidence of any specific instances in which Field Supervisors granted or withheld mandation pay in contravention of upper management’s directive or otherwise at their discretion.

In those instances where employees call off of work and leave their scheduled partner as an “orphan,” the supervisors routinely hold the orphan in reserve until such time that they can pair that orphan with a substitute or another orphan. In the event several employees call off of work and there are multiple “orphans,” the Field Supervisors work collaboratively with the employees to determine the pairings. Typically, the Field Supervisor will pair together those with the most similar schedules and according to employee preference. The pairings often result in a schedule change (i.e. more or less hours worked) for at least one of the orphans.

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<sup>3</sup> Brouhard also testified that a third directive to field supervisors is to “try [their] best to get [shifts] filled not using mandatory overtime.” However, no specific examples were cited on the record regarding when and how FSs ever implemented that directive to either grant or withhold mandation pay on their own and what factors they considered in making those determinations.

## **B. Analysis**

### **1. Section 2(11) Standard**

The Act expressly excludes supervisors from its protection. Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The three requirements to establish supervisory status are that the putative supervisor possesses one or more of the above supervisory functions; the putative supervisor uses independent, rather than routine or clerical, judgment in exercising that authority; and the putative supervisor holds that authority in the interest of the Employer. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712-713 (2001) (citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-74 (1994)).

Supervisory status may be shown if the alleged supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The statutory definition of a supervisor is read in the disjunctive. Possession of any one of the enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, is sufficient to confer supervisory status. *Kentucky River*, 532 U.S. at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers, but effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Children's Farm Home*, 324 NLRB 61, 65 (1997).

If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17 (2018). The supervisor has to at least act or effectively recommend such action “without control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692-693 (2006). Judgment is not independent when the putative supervisor follows detailed instructions (e.g., policies, rules, collective-bargaining agreement requirements). *Id.* at 693. To be independent, “the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” *Id.* at 693, citing *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994) (quoting *Bowne of Houston*, 280 NLRB 1222, 1223 (1986), finding that “the exercise of some ‘supervisory authority’ in a routine, clerical, perfunctory, or sporadic manner does not confer supervisory status”). If a choice is obvious, the judgment is not independent. *Oakwood Healthcare*, 348 NLRB at 693. The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are

protected under the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood Healthcare, Inc.*, supra at 687 (2006).

Furthermore, as defined in *Oakwood Healthcare, Inc.*, at 689-690, the term “assign” refers to the “act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” Assignment or responsible direction will, as noted above, produce a finding of supervisory status only if the exercise of independent judgment is involved. Independent judgment will be found where the alleged supervisor acts free from the control of others, is required to form an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. *Oakwood Healthcare*, supra at 693; *PPG Aerospace Industries, Inc.*, 353 NLRB 223, 223 (2008). Independent judgment requires that the decision “rise above the merely routine or clerical.” *Oakwood Healthcare*, supra at 693.

Lastly, the party asserting supervisory status has the burden of proving supervisory authority and must establish it by a preponderance of the evidence. *Kentucky River*, 532 U.S. at 711; *Oakwood Healthcare, Inc.*, 348 NLRB at 687. The lack of evidence is construed against the party asserting supervisory status. *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1047-1048 (2003). In addition, purely conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004). Similarly, supervisory status is not demonstrated when the evidence is in conflict or inconclusive. *Entergy Mississippi, Inc.*, 367 NLRB No. 109, slip op. at 2-3 (2019).

## 2. Section 2(11) Factors

### i. **Assignment**

#### *(1) Assigning employees to a particular time*

The Employer argues that Field Supervisors have the authority to assign employees to particular work times. In support, the Employer relies, in part, on evidence that Field Supervisors are involved in covering unscheduled absences and potentially holding field employees past their scheduled shift if operational needs require it.

While the Field Supervisors have the authority to change employees’ schedules ad hoc, including by assigning employees to stay over their shift, the record does not show that the Field Supervisors exercise independent judgment in doing so. There is no evidence that the Field Supervisors forced the field employees to stay over their shift; rather, the record establishes that it is done on a voluntary basis. Field Supervisors offered incentives in the past, such as gift cards, but those amounts were predetermined and are now seemingly out of use. The record reflects that Field Supervisors routinely seek to fill vacant shifts and pair “orphans” together on a voluntary and collaborative basis. It appears that the Field Supervisors try to appease the orphans by taking



into account their preferences and willingness to work a modified shift, if necessary. However, the record does not establish that they exercise independent judgment when collaborating with employees to determine the pairings. See e.g., *Children's Farm Home*, 324 NLRB 61, 64 (1997)(making assignments based on employee preference not supervisory).

Finally, the Board has held that the scheduling of overtime, if carried out within fixed parameters established by management, is routine and does not indicate supervisory status. *Dico Tire, Inc.*, 330 NLRB 1252 (2000). Here, the evidence indicates that the collective-bargaining agreements dictate how forced mandation is implemented to cover unscheduled employee absences. While a Field Supervisor can require a field employee to stay over their shift to cover an unscheduled absence, the Field Supervisor's authority is derived from detailed parameters established by the operative collective-bargaining agreement. With regard to voluntary mandation, as discussed above, the uncontroverted evidence establishes that Field Supervisors grant and withhold mandation pay at the direction of upper management. Mandation pay is either "off the table," or they are told to "pull out all the stops" to cover shifts. To the extent there is a third directive given to FSs to "try their best" not to award mandation pay, no specific instances were cited on the record as to when and how FSs ever implemented that. Of course, common sense would dictate that any supervisor trying to avoid awarding mandation pay would first offer the shift(s) without mandation pay and then resort to offering mandation pay in the absence of forthcoming volunteers. Whatever the technique and factors considered, if any, the record is silent on that point.

Consequently, I find that the Field Supervisors' involvement in covering vacant shifts and their grant of overtime and mandation pay do not involve the use of independent judgment. Based on the foregoing, I find that the Employer has failed to meet its burden in showing that Field Supervisors possess independent authority to assign employees to specific schedules or shifts.

*(2) Assigning employees to a particular location*

The Employer also argues that Field Supervisors use independent judgment to assign field employees to specific places in the course of a day. The Employer points to evidence on the record of Field Supervisors adjusting the system Plans and choosing how to repost or double post ambulances in order to limit delays in response time.

The Board's decision in *Entergy Mississippi, Inc.*, 367 NLRB No 109 (2019) provides useful guidance here. In that case, the Board concluded that power utility dispatchers were supervisors within the meaning of Section 2(11) based on the dispatchers' use of "independent judgment in assigning employees to places by prioritizing outages, determining how many employees should be sent to address a given outage, and deciding to reassign field employees or hold them over from their regular shift or to summon on-call employees to work." *Id.* at 4. Critical to the Board's finding that the dispatchers used independent judgment was the fact that there were "no standard operating procedures or rules for dispatchers to follow when prioritizing outages." *Ibid.* Thus, the Board found that the "the dispatchers make complex decisions regarding prioritization of outages and the number of employees to dispatch to effect repairs based on their

own judgment, guided by a wide range of discretionary factors.” *Ibid.* Finally, the Board found that “the dispatchers’ decisions regarding outage prioritization and reassigning field employees necessarily result in the dispatchers sending particular field employees to particular places in multiple outage situations.” *Id.* at 5.

As in *Entergy Mississippi*, the record here establishes that Field Supervisors have the authority to assign field employees to different locations, to call field employees back into headquarters, or provide field employees with additional down time to recover from calls. Furthermore, the Field Supervisor adjusts the Plan after considering various factors, including changes in traffic congestion as a result of weather or an event, or an anticipated high volume of calls as a result of emergencies, such as wildfires. Although there are 12-13 pre-formulated Plans from which to choose, the Field Supervisors choose which Plan to utilize when making the adjustment, which is based on their experience with traffic patterns, their knowledge of the geography, the impacts of special events, and the magnitude of the emergency. Furthermore, the Field Supervisors make additional adjustments to the changed Plan by relocating crews within the Plan by double posting and/or relocating ambulances.

Similar to the fact pattern in *Entergy Mississippi*, there are no operating procedures or guidelines for Field Supervisors to follow when making these adjustments on the fly and deciding which Plan to implement. Rather, the Field Supervisors adjust Plans using their expertise and independent discretion in dealing with emergencies and changing conditions. Furthermore, as in *Entergy Mississippi*, in these situations, the Field Supervisor prioritizes certain locations over others and moves field employees from one location to another.

Thus, I find that the Field Supervisors’ adjustment of Plans and the reassignment of employees involves the use of independent judgment.

### *(3) Assigning employees to significant overall duties*

The Employer also asserts that Field Supervisors have the authority to assign operators to significant overall duties as defined by the Board in *Oakwood*, supra. To support its assertion, the Employer relies on the Field Supervisors’ authority to move an ambulance from performing 9-1-1 Calls to perform IFT requests. I agree that the nature of responding to 9-1-1 Calls are significantly different from responding to IFT requests. A field employee’s workload and working conditions change dramatically when changing from 9-1-1 Calls to IFTs. 9-1-1 Calls, by their nature, typically involve more acute treatments and are more demanding than IFT requests, which are scheduled transfers to or from medical facilities. See e.g. *Oakwood*, supra. (finding that wholesale change in job classification is unnecessary). However, field employees are trained to respond to both types of calls, and it appears that any judgment exercised by Field Supervisors in making the switch is routine. They simply look at call volume and ambulance availability; i.e. demand and supply. It is not the type of complex decision-making that requires the use of independent judgment.

In sum, and for the foregoing reasons, I find that the Employer has not met its burden to show that Field Supervisors exercise independent judgment when assigning work to field employees.

## **ii. Discipline**

The record evidence establishes that Field Supervisors initiate and issue corrective actions to field employees for attendance violations or violations of face mask protocols. The corrective actions can lead to further discipline as part of the contractual progressive-disciplinary policies. However, it appears from the record that the corrective actions require little to no discretion in determining whether an infraction occurred or whether discipline is merited. Accordingly, I find that while the Field Supervisors issued the discipline independently, they were routine or clerical decisions.

Field Supervisors' participation in higher-level disciplinary actions, however, is markedly different. The record reflects that Field Supervisors are often responsible for independently investigating alleged misconduct. Although it does not appear that Field Supervisors possess the authority to terminate employees on their own, it is clear from the record that they make effective recommendations regarding whether and what degree of discipline is warranted based on their independent investigations and conclusions. The Operations Manager and Regional Director regularly adopted the supervisors' recommendations, as illustrated by the above examples involving Field Supervisor Warren's, Skourtis's, and LaMark's independent investigations and findings concerning, respectively, an alcohol purchase, time theft, and alleged inappropriate behavior.<sup>4</sup> The example that garnered the most attention on the record was Warren's effective recommendation against discharging an employee for the otherwise terminable offense of purchasing alcohol while working. Indeed, it is undisputed that Operations Manager Ornelas told Warren that he considered the infraction to be an egregious and "terminable offense" when instructing him to investigate the incident. However, Warren successfully lobbied upper management to levy a lesser discipline based on his independent investigation and assessment that the subject employee was naïve, honest, contrite, and deserved a second chance. Although Ornelas suggested at the outset that termination was a foregone conclusion, Warren went against the grain to effectively recommend lenience. Neither Ornelas nor Brouhard looked behind Warren's investigation or followed up on their own with the employee to test Warren's conclusions and recommendation. It is well established that a recommendation is effective when "the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed." *Children's Farm Home*, 324 NLRB 61, 61 (1997).

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<sup>4</sup> It is noteworthy that there is no evidence of follow up or secondary investigation by superiors; rather, the Field Supervisors' investigations, findings, and conclusions and, often, their recommendations form the basis of disciplinary decisions. While these investigations were guided by the "Just Culture" protocol, that protocol does not dictate whether discipline issues and at what level.

Based on the above, I find that the record amply supports a finding that Field Supervisors effectively recommend discipline and are thus statutory supervisors.<sup>5</sup>

### 3. Secondary Indicia

In addition to the primary indicia explained in the Decision above, the record is replete with evidence of the Field Supervisors' secondary indicia of statutory supervisory status. Field Supervisors have their own offices and their own sleeping quarters. Field employees share bunks with other field employees. Field Supervisors are also salaried and do not receive any overtime for working past their 48-hour shifts. More significantly, to the general public, Field Supervisors are identified as supervisors by various identifying markers in their uniform, including a different shoulder and chest badge, and different colored accessories that identify Field Supervisors as higher-ranking officers. Additionally, Field Supervisors drive to sites in an SUV marked "Supervisor" and are held out to be higher-ranking agents of the Employer.

### **CONCLUSION**

Based upon the entire record in this matter and in accordance with the discussion above, I have concluded that Field Supervisors exercise independent judgment in assigning employees to particular locations by making on-the-spot changes to the System Status Plans, that Field Supervisors effectively recommend discipline, and that Field Supervisors possess many secondary indicia of supervisory status. As a result, and based on the record evidence, I conclude and find as follows:

1. The rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, as stipulated by the parties, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Field Supervisors of the Employer do not constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act because they are supervisors as defined by Section 2(11) of the Act.

Based on the foregoing, the National Labor Relations Board will not conduct an election.

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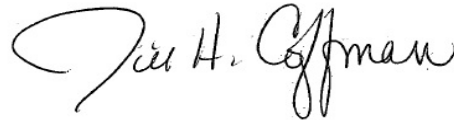
<sup>5</sup> With regard to the Field Supervisors' ability to recommend employees for hire, the record evidence is insufficient to show that they possess this authority. While they participate on an interview panel, their level of participation in drafting the hiring recommendation is unclear. As a result, I do not find that the Employer has met its burden to show that the Field Supervisors have the authority to hire or effectively recommend the hiring of employees.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by June 22, 2022.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Signed this 8<sup>th</sup> day of June 2022.



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**JILL H. COFFMAN**  
Regional Director, Region 20  
National Labor Relations Board